

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

JAMES SMITH,

Plaintiff,

vs.

FEDEX FREIGHT

Defendant.

CV 23-27-BLG-SPW

ORDER ADOPTING  
FINDINGS AND  
RECOMMENDATIONS

Before the Court are United States Magistrate Judge Timothy Cavan's Findings and Recommendations, filed March 12, 2024. (Doc. 23). Judge Cavan recommended the Court grant in part and deny in part Defendant FedEx Freight's Rule 41(b) Motion for Dismissal (Doc. 19). (Doc. 23).

The parties were required to file written objections within 14 days of the filing of Judge Cavan's Findings and Recommendations. 28 U.S.C. § 636(b)(1). Neither party objected to the Findings and Recommendations, and so waived their right to de novo review of the record. *See* 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed."


*Government of Guam v. Guerrero*, 11 F.4th 1052, 1059 (9th Cir. 2021) (quoting *C.I.R. v. Duberstein*, 363 U.S. 278, 291 (1960)). After reviewing the Findings and Recommendations, this Court does not find that Judge Cavan committed clear error.

Accordingly, IT IS HEREBY ORDERED that Judge Cavan's Findings and Recommendations (Doc. 23) are ADOPTED IN FULL. Defendant FedEx Freight's Rule 41(b) Motion for Dismissal (Doc. 19) is GRANTED as to dismissal and DENIED as to dismissal with prejudice.

IT IS FURTHER ORDERED that this matter is DISMISSED WITHOUT PREJUDICE pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The Clerk is directed to close this case and notify the parties.

DATED this 29<sup>th</sup> day of March, 2023.

  
SUSAN P. WATTERS  
United States District Judge